

**CHAPTER NO. 48****SENATE BILL NO. 459****By Womack, Person**

Substituted for: House Bill No. 496

By Sands, Walker

AN ACT To amend Tennessee Code Annotated, Title 56, Chapter 12 and Title 56, Chapter 9, relative to insolvency of insurance companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-12-103, is amended by deleting the section in its entirety and by substituting instead the following:

This part shall apply to all kinds of direct insurance, but shall not be applicable to the following:

- (1) Life, annuity, health or disability insurance;
- (2) Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, or other collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear or provides reimbursement for the liability incurred by the issuer of the agreements or service contracts that provide such benefits;
- (6) Title insurance;
- (7) Ocean marine insurance;
- (8) Any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk;

- (9) Any insurance provided by or guaranteed by government;
- (10) Any insurance issued on a limited or unlimited assessable basis; or
- (11) Excess insurance.

SECTION 2. Tennessee Code Annotated, Section 56-12-104, is amended by deleting the section in its entirety and substituting instead the following:

As used in this part, unless the context otherwise requires:

(1) "Account" means any one (1) of the accounts created by §56-12-105.

(2) "Affiliate" means a person who directly, or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(3) "Association" means the Tennessee Insurance Guaranty Association created under §56-12-105.

(4) "Claimant" means any insured making a first-party claim or any person instituting a liability claim; provided, however, no person who is an affiliate of an insolvent insurer may be a claimant.

(5) "Commissioner" means the Commissioner of Commerce and Insurance.

(6) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(7)(A) "Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this part applies and was issued by an insurer which is insolvent, if such insurer becomes an insolvent insurer after the effective date of this act, and:

(i) The claimant or insured is a resident of this state when the insured event occurs; provided, however, for an entity other than an individual, the residence of a claimant, insured or policyholder is the state in which its principal place of business is located when the insured event occurs; or

(ii) The claim is a first-party claim for damage to property with a permanent location in this state.

(B) "Covered claim" does not include:

(i) Any amount awarded as punitive or exemplary damages;

(ii) Any amount sought as a return of premium under any retrospective rating plan;

(iii) Any amount due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. No such claim for any amount due any reinsurer, insurer, insurance pool, or underwriting association may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent such claim exceeds the association's obligations and limitations set forth in this part or policy limits of the insured whichever amount is greater;

(iv) Any first party claim by an insured whose net worth exceeds ten million dollars (\$10,000,000) on December 31 of the year next preceding the date the insurer becomes an insolvent insurer. An insured's net worth on such date is deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis; and

(v) Any first-party claims by an insured which is an affiliate of the insolvent insurer.

(8) "Insolvent insurer" means an insurer authorized to transact insurance in this state, either when the policy was issued or when the insured event occurred, and against whom a final order of liquidation has been entered after the effective date of this act with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.

(9)(A) "Member insurer" means any person who:

(i) Writes any kind of insurance to which this part applies under §56-12-103 including the exchange of reciprocal or inter-insurance contracts; and

(ii) Is licensed to transact insurance in this state, except county mutual fire insurance companies and nonprofit service corporations.

(B) An insurer shall cease to be a member insurer effective on the day after the termination or expiration of its license to transact the kinds of insurance to which this act applies; provided, however, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied before the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer which became an insolvent insurer before the termination or expiration of such insurer's license.

(10) "Net direct written premiums" means:

(A) Direct gross premiums written in this state on insurance policies to which this part applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business.

(B) Net direct written premiums does not include premiums on contracts between insurers or reinsurers.

(11) "Person" means any individual, corporation, partnership, governmental entity, association, voluntary organization or any other legal entity.

SECTION 3. Tennessee Code Annotated, Section 56-12-107(a)(1), is amended by adding the following new subdivision:

(C)(i) Any obligation of the association to defend an insured shall cease upon the association's payment, by settlement releasing the insured or on a judgment, of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit.

(ii) Notwithstanding any other provisions of this part, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons shall cease when ten million dollars (\$10,000,000) have been paid in the aggregate to or on behalf of any single insured and its affiliates by the association and any one (1) or more associations

similar to the association of any other state or states or any property and casualty security fund which obtains contributions from insurers on a pre-insolvency basis, on covered claims or allowed claims arising under the policy or policies of any one insolvent insurer. For the purposes of this section, the term "affiliate" means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. If the association determines that there may be more than one claimant having a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund in other states, under the policy or policies of any one (1) insolvent insurer, the association may establish a plan to allocate amounts payable by the association in such manner as the association in its discretion deems equitable.

SECTION 4. Tennessee Code Annotated, Section 56-12-107(a)(2), is amended by inserting after the words "become insolvent" and before the ";" the following language:

including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations. The association shall not be deemed the insolvent insurer for any purpose relating to the issue of whether the association is amenable to the personal jurisdiction of the courts of any other state

SECTION 5. Tennessee Code Annotated, Section 56-12-107(b)(4), is amended by adding after the word "sued" the following language:

, and such power to sue includes the power and right to intervene as a party before any court that has jurisdiction over an insolvent insurer as defined by this part

SECTION 6. Tennessee Code Annotated, Section 56-12-107, is amended by adding the following new subsection:

(c) With respect to any suit involving the association:

(1) Any action relating to or arising out of this part against the association shall be brought in a court in this state. Such court shall have exclusive jurisdiction over any action relating to or arising out of this part against the association; and

(2) Exclusive venue in any action brought against the association is in the circuit or chancery court in Davidson County, Tennessee; provided, however, the association may waive such venue as to a specific action.

SECTION 7. Tennessee Code Annotated, Section 56-12-108(c), is amended by deleting the word "and" from subdivision (8), and by substituting the punctuation ";" and the word "and" after subdivision (9) and by adding a subdivision (10) to read as follows:

(10) Establish procedures for the disposition of liquidating dividends or other monies received from the estate of the insolvent insurer.

SECTION 8. Tennessee Code Annotated, Section 56-12-109(a)(1), is amended by inserting after the words "the insolvency" and before the ";" the following language:

. The association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time such complaint is filed with a court of competent jurisdiction

SECTION 9. Tennessee Code Annotated, Section 56-12-110, is amended by deleting the section in its entirety and substituting instead the following:

(a) Any person recovering under this part shall be deemed to have assigned such person's rights under the policy to the association to the extent of such person's recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer and except as provided in subsection (b).

(b) The association shall have the right to recover from the following persons the amount of any "covered claim" paid on behalf of such person pursuant to this part:

(1) Any insured whose net worth on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds twenty-five million dollars (\$25,000,000) and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part; and

(2) Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part.

(c) The association and any similar organization in another state are claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claims obligations as determined under this part or similar laws in other states and shall receive dividends and any other distributions at the priority set forth in §56-9-330. The receiver, liquidator or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this part and by settlements of claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this part against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses for handling claims.

(d) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

SECTION 10. Tennessee Code Annotated, Section 56-12-121, is amended by deleting the section in its entirety and substituting instead the following:

(a) In no case shall a covered claim include any claim filed with the association, domiciliary receiver, ancillary receiver or liquidator, after the earlier of:

(1) Eighteen (18) months after the date of the order of liquidation; or

(2) The final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

(b) In no case shall a covered claim include any claim filed with the association, domiciliary, or ancillary receiver or a liquidator for protection afforded under the insured's policy for incurred-but-not-reported losses.

SECTION 11. Tennessee Code Annotated, Section 56-12-107(a)(3), is amended by deleting from the third complete sentence the language "one percent (1%)" and substituting instead the language "two percent (2%)".


SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it. The provisions of this act shall apply and be effective only as to an insolvency arising after this act takes effect.

PASSED: March 18, 1999

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 31st day of March 1999

  
DON SUNDQUIST, GOVERNOR